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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 612

WILLIAM HILLIARD CLAYPOOLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 1a-2a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 7, 1955 (Pet. 3a). The petition for a writ of certiorari was filed on January 6, 1956. The jurisdiction of this Court in invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court gave proper instructions on the weight to be given to character evidence.

STATEMENT

Petitioner was convicted by a jury in the District Court for the District of New Jersey under two indictments for the following offenses committed while he was the postmaster of the Mount Holly Post Office:—embezzlement of postal revenues (18 U.S.C. 1711); mutilation and concealment of records (18 U.S.C. 2071(b)); the making of false entries in his postal and stamp accounts (18 U.S.C. 2073); and the falsification and concealment of the fact of a shortage in his postmaster's account (18 U.S.C. 1001) (R. I 6a-18a).[1] He received a concurrent sentence of one year and one day on each count of the two indictments (R. I 2a, 4a). On appeal, the conviction was affirmed *per curiam* (Pet. 1a-2a).

The government's case consisted mainly of the testimony of postal inspectors who had conducted a series of investigations of petitioner's postal accounts and found shortages (R. I 19a-28a, 32a-34a, 40a-41a, 106a-109a, 139a-154a, R. II 3b-17b, 19b-32b). Petitioner admitted his failure to make entries in his postal accounts as charged in several counts but denied that this was done with intent to deceive (R. I 110a-112a). Petitioner took the

[1] The record in this Court consists of Appellant's Appendix, which will be referred to herein as "R.I," and Appellee's Appendix, which will be referred to herein as "R.II."

stand to explain his version of the transactions (R. I 213a-220a, 227a-268a), and introduced some twenty character witnesses, who vouched for his good reputation for honesty and integrity (R. I 220a-222a).

At the close of the evidence, the counsel for petitioner requested the court to give the jury the following charge (Pet. 6):

> You have before you the testimony of a number of witnesses that the defendant has a good reputation for honesty and integrity. I charge you that this evidence alone may create in your minds a reasonable doubt as to the defendant's guilt. If it does, you must find him not guilty.

Instead the court gave the following charge (R. I 311a-312a):

> In telling to you these general rules that will govern you in your deliberation, I also call to your attention the fact that the defense offered character testimony; some twenty or more witnesses were brought here to tell you of the reputation of the accused.
>
> Mere proof of good character does not entitle the defendant to a verdict of acquittal, but it is equally true that evidence of good character, when considered along with all of the other evidence in the case, may be the factor which creates the reasonable doubt which entitles a defendant to an acquittal by a jury. The very object of introducing character evi-

dence is to raise in the minds of the jury a reasonable doubt as to th[e] defendant's guilt.

Defense counsel entered a[n] objection to this portion of the charge (R. I [3]20a-321a).

ARGUM[ENT]

Petitioner's sole conte[n]tion before this Court (Pet. 7-13) is that the cha[rge] of the district judge relative to the considerat[ion] to be given evidence of good character by th[e] jury did not meet the criterion established in *Edgington* v. *United States*, 164 U.S. 361, 366. The trial court in *Edgington* had instructed the jury to consider evidence of good character only if they were in doubt as to the guilt of the defendant. 164 U.S. at 364-365. This Court held that such an instruction was erroneous and set forth what has become the guiding rule for instructions on evidence of good character (164 U. S. at 366):

> Whatever may have been said in some of the earlier cases, to the effect that evidence of the good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue would alone create a reasonable doubt, although without it the other evidence would be convincing.

The charge as given by the trial judge in this case (*supra*, pp. 3-4) follows the law as outlined in the *Edgington* case.[2] The fact that the district judge said the evidence of good character might be "*the* factor which creates the reasonable doubt" (R. I 312a, emphasis added), requiring a verdict of acquittal, was in effect the same as telling the jury that evidence of good character alone might create the reasonable doubt. It was in accord with the *Edgington* case, 164 U. S. at p. 366, to instruct the jury that evidence of good character was to be considered along with the other evidence in the case.

Petitioner contends that the instant charge is similar to those held erroneous in *Miller* v. *United States*, 120 F. 2d 968, 971-972 (C. A. 10) and *Snitkin* v. *United States*, 265 Fed 489, 491-492 (C.A. 7). A comparison of the three charges, however, shows that the one involved here does not contain the faults found in the other two. The *Snitkin* charge told the jury to give the evidence of good character only "* * * such weight as you think it is entitled to * * *". 265 Fed. at 492. The Seventh Circuit held that such a charge did not furnish the jury the legal scales by which to weigh the evidence of good character "* * * namely, that a reputation for good character, if established, alone may create a reasonable doubt, although without it the other evidence would be convincing of guilt." 265 Fed. at 492.

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[2] It exactly parallels the language of the Third Circuit in *United States* v. *Quick*, 128 F. 2d 832, 836.

The *Miller* charge [3] was held erroneous in that it was confusing and did not tell the jury that evidence of good character alone may be such as to create a reasonable doubt. 120 F. 2d at 971-973.[4]

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[3] The charge in *Miller* v. *United States*, 120 F. 2d at 971 was:

"* * * 'Evidence has been introduced to show the good character of the defendants. Evidence of a defendant's good character or previous good character is competent evidence in favor of the party accused as tending to show that he would not be likely to commit the crime charged against him, and in this case, if the jury believe from the evidence that prior to the commission of the crime, the defendants or any of them had always borne a good character or reputation for being law-abiding among his acquaintances in the neighborhood in which he lives, *this then is a fact proper to be considered by the jury with all of the other evidence in the case in determining the question whether or not the witness who testified to the facts tending to incriminate him might have been mistaken or testified falsely or truthfully*, and if after careful consideration of all the evidence in the case, including that bearing upon the defendant's previous good character, the jury entertain a reasonable doubt of the defendant's guilt, then it is your duty to acquit; but if after considering all the evidence including that of the previous good character, you believe beyond a reasonable doubt that the defendant or defendants committed the crime, it is equally your sworn duty to convict.' (Italics supplied)."

[4] The holding of the Tenth Circuit as to the above charge in *Miller* v. *United States*, 120 F. 2d at 971-972, was:

"* * * The instruction is drawn too narrowly. It does not tell the jury that character testimony may be such that it alone may create a reasonable doubt, although without it the other evidence would be convincing. Edgington v. United States, 164 U.S. 361, 366, 17 S. Ct. 72, 41 L. Ed. 467. The instruction in one part told the jury that if, after a consideration of all the evidence, including that of good character, the jury entertained a reasonable doubt, then they should acquit. However, in another part of the instruction it limited the consideration of the character testimony to a determination whether the prosecuting witnesses committed perjury or were

The instant charge in its entirety correctly follows this Court's decision in *Edgington* v. *United States*, 164 U.S. 361, 366.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1956.

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mistaken. From a reading of the whole instruction the jury may have concluded that if they believed from all of the evidence, including that of previous good character which was offered only to show that the witnesses testifying for the prosecution were mistaken or testified falsely, then they should acquit. This clearly would be erroneous. It is not sufficient that an instruction be so drawn that a jury may reach the right conclusion, but it is required that it be so framed that a jury may not draw the wrong conclusion therefrom."

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